

REMARKS

The office action of February 2, 2005 has been reviewed and its contents carefully noted.

Reconsideration of this case, as amended, is requested. Claims 1 and 3 through 26 remain in this case.

Restriction Requirement

The Examiner has made a restriction requirement and has identified three species as follows:

Species (a) – the species of Figure 1

Species (b)- the species of Figure 8.

Species (c)- the species of Figure 9

The Applicant hereby elects species (b) defined by Figure 8 and claims 1, 3-7, 10-13, and 16-18. This requirement for election as best understood is respectfully traversed.

The MPEP states the following with regard to stating a prima facie case of restriction between patentably distinct inventions:

“There are two criteria for a proper requirement for restriction between patentably distinct inventions:

1) The inventions must be independent (see MPEP 802.01, 806.04, 808.01) **or distinct as claimed** (see MPEP 806.05-806.05(i)); and

2) There must be a **serious burden on the examiner** if restriction is not required (see MPEP 803.02, 806.04(a) - 806.04(j), 808.01(a) and 808.02).

GUIDELINES

Examiners must provide reasons and/or examples to support conclusions, but need not cite documents to support the requirement in most cases. **Where plural inventions are capable of being viewed as related in two ways, both applicable criteria for distinctness must be**

demonstrated to support a restriction requirement...For purposes of the initial requirement a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP 808.02.” (MPEP 803)

All of the inventions would be searched within the same classes and subclasses. Even if some of the inventions would be classified separately, a thorough search of the prior art for any one of the inventions would include the classes and subclasses of the other inventions.

Furthermore, when electing species, “where there is a relationship disclosed between species, such disclosed relation must be discussed and reasons advanced leading to the conclusion that the disclosed relation does not prevent restriction, in order to establish the propriety of restriction.” (M.P.E.P. 808.01(a)). The Examiner neither discusses the disclosed relation or the reasons advanced leading to the conclusion that the relation should not prevent restriction. Therefore, the restriction is improper.

The Examiner states that claims 1, 3-7 and 11-12 are generic. The Applicant also believes that claims 17 and 18 are generic. Therefore, if any of these claims are allowed, the Applicant is entitled to consideration of claims to additional species.

All of the Figures show variations of a hydraulic machine of the invention. There is no burden on the Examiner to search any of the aspects of this invention. Therefore, the Applicant requests reconsideration and withdrawal of the election requirement. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' agent would advance the prosecution of the case to finality, he is invited to telephone the undersigned at the number given below.

Conclusion

Applicant believes the claims, as amended, are patentable over the prior art, and that this case is now in condition for allowance of all claims therein. Such action is thus respectfully requested. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' attorney would advance the prosecution of the case to finality, he is invited to telephone the undersigned at the number given below.

"Recognizing that Internet communications are not secured, I hereby authorize the PTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file."

Respectfully Submitted:

--Gleasant *et al.*--

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